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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Marriage of ARIEL VENEZIANO  
and AZITA ZENDEL.

B231929  
(Los Angeles County  
Super. Ct. No. BD468374)

ARIEL VENEZIANO,

Respondent,

v.

AZITA ZENDEL,

Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles, Rafael Ongkeko, Judge. Affirmed.

Azita Zendel, in pro. per., for Appellant.

No appearance for Respondent.

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Appellant Azita Zendel and respondent Ariel Veneziano, married for approximately three and a half years, have been in the process of dissolving the marriage since 2007.<sup>1</sup> Trial on division of property and debt was re-set for October 4, 2010, after appellant had failed to appear at an earlier scheduled date. Following denial of a request to continue, appellant, who has been representing herself and appearing in court on a regular basis since the case was initiated, filed two declarations stating that a “medical condition” required her to appear telephonically at the trial. Appellant did not appear on October 4, instead filing a third declaration stating an “emergency medical condition” prevented her attendance. The trial went forward in her absence. The court issued rulings on division of the couple’s property and debts and entered a final judgment based on evidence presented at the hearing. On appeal, appellant contends: (1) the court erred in failing to rule on her multiple requests to accommodate her alleged disability by continuing the trial or allowing her to appear telephonically; (2) formal notice of the trial date was not mailed to her, rendering the proceeding void; (3) the court erroneously permitted trial to go forward based on outdated property and income and expense declarations; (4) one of the exhibits introduced at the trial had been “falsified” and “doctored”; (5) the proposed judgment prepared after the trial was not served on her prior to entry of the final judgment, preventing her from raising objections to its content; and (6) the court’s finding concerning the number

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<sup>1</sup> This is the second time this case has been before us. In an opinion and order filed January 2012, we resolved appellant’s prior appeal of interim spousal support and attorney fee orders, affirming the attorney fee order, reversing the spousal support orders in part, and remanding for allocation toward spousal support of a lump sum payment received by respondent from a former employer.

of months she had received interim spousal support and the amount awarded was mistaken.<sup>2</sup>

We conclude that any error resulting from the court's failure to rule on appellant's requests for accommodation was harmless because appellant failed to adequately support her claim of disability. With respect to her other contentions, to the extent the alleged errors occurred, appellant forfeited the right to object on appeal when she failed to appear at the trial and/or has established no prejudice arising from the claimed errors. Accordingly, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND<sup>3</sup>**

Appellant and respondent were married in September 2003. In June 2007, respondent filed a petition for dissolution. Over the ensuing years, the couple, who have been in pro per for some time, engaged in myriad disputes, primarily related

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<sup>2</sup> The appeal also purports to challenge discovery orders made in July, September, and December 2009 and March 2010. The challenged orders pertained to appellant's attempt to obtain information from a former employer of respondent's about a lump sum it paid to him. In the prior appeal, we concluded that the lump sum was properly characterized as income to respondent, and that a portion should have been allocated to appellant in accordance with existing spousal support orders. Accordingly, this portion of the appeal is moot. Appellant also contends in her brief that prior orders denying her an award of attorney fees to hire an attorney to represent her at trial represented a "structural failure" warranting reversal. In the prior appeal, we upheld the trial court's March 8, 2010 order conditionally awarding fees to appellant only if respondent's financial prospects improved sufficiently for him to afford counsel. This did not occur. There is no basis to reconsider that issue.

<sup>3</sup> This summary is based on documents in the record, put together by appellant as an Appellant's Appendix, and the reporter's transcripts of hearings. We understand that appellant disputes some of the matters set forth in the record, specifically whether she called or attempted to call the court prior to her nonappearance at certain hearings and whether a clerk once hung up on her when she was trying to get through to the court. However, appellate courts do not take evidence or make factual findings. The trial court is the sole arbiter of the facts. (See *Navarro v. Perron* (2004) 122 Cal.App.4th 797, 803.)

to appellant's attempts to ascertain respondent's income for purposes of obtaining interim spousal support.

The trial to determine division of property and debt was scheduled to take place on August 4, 2010. On that date, appellant filed a handwritten document entitled "Declaration of Azita Zendel" stating that she had intended to appear at the hearing, but "woke up early in the morning" with a "medical condition." Attached to her declaration was a letter dated July 26, 2010, purporting to be from a physician, Dr. Rahnana Sachs. Appellant's declaration described the letter as a "doctor's note regarding the medical condition, she is experiencing on July 26, 2010." The letter stated: "[Appellant] is experiencing severe migraine headaches which often leave her nauseous and light-sensitive. She is undergoing trials of therapy with the following medications: Relpax, Zofran/Compizene, and Tylenol #3/Vicodin. [¶] She is unable to drive or operate heavy machinery. Presence at trial hearing at this time will most certainly cause exacerbation of her condition and is contraindicated at this time." In the declaration, appellant requested permission to appear telephonically at the August 4 hearing, and stated that she needed the judge's permission to do so.

At the August 4 hearing, the court issued an order to show cause re sanctions.<sup>4</sup> A trial setting conference took place on August 13. Appellant appeared telephonically. The court ruled she would not have to pay sanctions and re-set trial for October 4 and 18, 2010. The order directed respondent to give notice.

Later in the day on August 13, appellant filed a two-page, single-spaced handwritten document entitled "Declaration and Request to Appear via Court Call

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<sup>4</sup> Whether appellant was permitted to appear telephonically at the hearing is unclear from the record.

on 10/4/10 & 10/18/10.”<sup>5</sup> It stated that she suffered from the “medical condition” described in Dr. Sachs’s July 26 letter. The declaration further stated: “I need to make sure that my medical condition does not prevent me from appearing in court on 10/4/10 and 10/18/10, and in case I am unable to be physically present in the courtroom, I need to make sure that instead, I am able to make an appearance via court call on the phone.” She stated that, as a pro per party, she could not appear telephonically without the express permission of the judge in the Department, Judge Ongkeko, and explained at length the efforts she had undertaken to obtain the judge’s permission (none of which involved asking the judge during her telephonic appearance earlier in the day at the trial setting conference). In the last lines of the document, appellant stated: “I am hereby requesting that the court accommodate my physical impairments that prohibit me from physically appearing in the court room by granting my request to appear via court call on 10/4/10 and 10/18/10.”

On the same date the “Declaration and Request” was filed, appellant moved to continue the trial on division of property and debts. She asked the court to instead hold a hearing on her requests to extend and modify interim spousal support.<sup>6</sup>

On September 13, appellant filed a second document entitled “Declaration and Request to Appear via Court Call on 10/4/10 & 10/18/10.” It was an exact

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<sup>5</sup> Appellant wrote the declaration and request on Judicial Council Form MC-030. That form is intended to be used for witness declarations, which are generally attached to motions, not filed separately. The form does not contain a place for a hearing date or a box to be checked to request a hearing or other action.

<sup>6</sup> The motion to continue had a hearing date of September 13. The record does not reflect whether a hearing took place on that date. This was not the first time appellant sought to delay the trial on the division of property and debt. Six months earlier, the court heard and denied appellant’s motion to continue the trial (at that time scheduled for June).

duplicate of the August 13 declaration and request, except the date of appellant's signature had been whited out and replaced with a new date.

Appellant failed to appear on October 4. As a result of appellant's nonappearance, the court took several motions appellant had filed off calendar.<sup>7</sup> The trial went forward, starting at approximately 2:45 p.m. Respondent was sworn and began to testify. At 3 p.m., a messenger appeared with a declaration signed by appellant. It stated: "Due to her dire emergency medical condition, [appellant] is unable to be present in person at the hearings/trial of October 4, 2010 and request[s] that all matters before the court be continued to the next hearing date on calendar. [Appellant] is under the care of several doctors and will file all the necessary documents regarding her medical condition with the court." Appellant claimed to have been trying to call in and appear telephonically.

The court ordered the declaration to be lodged rather than filed as it did not appear to be an original. Nonetheless, the court asked respondent whether he was amenable to a continuance. Respondent objected, stating that "[appellant] is not to be believed as far as her medical conditions," and that appellant had "in the past . . . us[ed] excuses" in an attempt "to postpone [trial] indefinitely." Noting that appellant had filed "many requests" to continue the trial and that there had been no evidence presented of a "dire emergency medical condition," the court denied the request, finding it "inadequate" and lacking good cause, with "insufficient evidence to enable the court to continue the [trial]." The court further found that it would be prejudicial to respondent to delay: "He has been prepared, he has exhibit books ready, and he's representing himself today and deserves to have his day in court." At 3:50 p.m., appellant called the court and requested to participate

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<sup>7</sup> In addition to the motion to continue filed August 13, appellant had apparently filed a request for an order to show cause re contempt, a new request for an order to show cause re spousal support, and a motion to compel.

telephonically, but hung up before the court could consider the request. At 4:05 p.m., the messenger returned with the same declaration that had been lodged earlier. The court again acknowledged receipt of the document but declined to file it.

As trial went forward, respondent presented evidence that appellant had the ability to earn between \$25,000 and \$40,000 annually, and that the couple had separated on March 6, 2007, when respondent moved into his own residence. He testified that during the time he had known appellant, he had not observed her suffering from any health problems that would stand in her way of her becoming self-supporting, and that he had asked during discovery for documentation of her health problems, but had received nothing. He testified that he had paid spousal support for 19 months. With respect to his current financial situation, respondent testified he had started a film sales consulting business but that it had been operating at a loss, and that he had a significant unpaid tax liability, in large part due to the lump sum he had received from his former employer. Asked by the court about his most recent income and expense declaration, respondent stated that the debt had increased and the balance had gone down. An account shown as containing \$110,000 had been reduced to \$40,000.

Asked about the couple's debts, respondent testified that appellant had incurred approximately \$300,000 in credit card debt and/or family loans prior to the marriage, derived from her attempts to make and distribute a film. During the marriage, she covered the minimum payments, but interest continued to accrue, adding to the balance. Respondent understood the film to be appellant's separate property. Respondent was aware that appellant had claimed that the couple borrowed a significant sum from her mother during the marriage, but respondent had no knowledge of this transaction and his attempts to depose appellant's mother concerning the loan were unsuccessful. Respondent reviewed appellant's schedule

of assets and debts and testified that the debts listed on it were all her separate debts.

The court divided the couple's debts and assets in accordance with respondent's testimony and awarded appellant an additional three months of spousal support. A minute order incorporating the court's rulings was filed October 4. In December, respondent prepared and filed a final judgment and notice of entry of judgment. The court signed the judgment on December 27, and the clerk served the notice of entry that same day. Appellant timely filed a notice of appeal.<sup>8</sup>

## DISCUSSION

### *A. Requests for Accommodation*

#### *1. August 13 and September 13 Requests*

Appellant's primary contention on appeal is that the trial court erred in failing to rule on her August 13 and September 13 requests, which she characterizes on appeal as requests for accommodation of a disability under the Americans with Disabilities Act (42 U.S.C. § 12101 et seq., ADA) and California Rules of Court, rule 1.100. We conclude that to the extent the court was required to rule on requests which were framed ambiguously, were not in the proper format, and were not brought to its attention in the proper manner, any error in failing to rule was harmless.

California Rules of Court, rule 1.100 provides that it is the policy of the courts "to ensure that persons with disabilities" -- defined in accordance with the ADA -- "have equal and full access to the judicial system." If a person with a

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<sup>8</sup> In January 2011, appellant filed a motion for new trial, a motion to set aside, and a motion for reconsideration. Appellant's notice of appeal was filed before the motions were resolved, and the record does not indicate the resolution, if any, of these motions.

disability requests a reasonable accommodation, provides the court with “a statement of the impairment that necessitates the accommodation,” and otherwise complies with the rule, the person must be accommodated. (See Cal. Rules of Court, rule 1.100(c), (f), & (h); *Biscaro v. Stern* (2010) 181 Cal.App.4th 702, 708; *In re Marriage of James & Christine C.* (2008) 158 Cal.App.4th 1261, 1273.) It is error for a trial court to fail to rule on a request to accommodate. (*Biscaro v. Stern, supra*, at p. 709.) However, if a trial court fails to rule on such a request, we will affirm if it is clear from the record that the party failed to satisfy the requirements of the rule, and that the request should have been denied as a matter of law. (*Id.* at p. 708.)

Preliminarily, we note that California Rules of Court, rule 1.100 requires parties seeking accommodation to present the request “on a form approved by the Judicial Council, in another written format, or orally.” (Cal. Rules of Court, rule 1.100(c)(1).) As appellant concedes, she did not use Judicial Council form MC-410, the approved form. Nor does she claim to have made an oral request, although she was in telephonic contact with the court on August 13, the day she filed the first declaration and request. She contends that the request was presented by way of an acceptable “[j]other written format.” We disagree. The documents filed August 13 and September 13 consisted of two, single-spaced handwritten pages of information that nowhere referred to California Rules of Court, rule 1.100 or the ADA. To the contrary, the documents stated in their titles that appellant was requesting to appear “via Court Call,” which signaled that appellant’s request came under California Rules of Court, rule 3.670.<sup>9</sup> Moreover, unlike form MC-410, the

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<sup>9</sup> California Rules of Court, rule 3.670 does not generally permit parties or their attorneys to appear by telephone at conferences or hearings at which witnesses are expected to be called to testify. (Cal. Rules of Court, rule 3.670(d).) As testimony was going to be taken at the trial, appellant could not appear telephonically under that rule.

documents filed by appellant did not provide a place for the court to state whether it would grant, deny or provide an alternative accommodation, and nothing on the face of the documents indicated a hearing was requested.<sup>10</sup>

Even were we to agree that the documents filed in August and September adequately informed the court that appellant was seeking accommodation under California Rules of Court, rule 1.100 as a person with a disability, the information provided concerning the nature of her alleged disability and the reason she required accommodation was wholly inadequate. (See *Brundage v. Hahn* (1997) 57 Cal.App.4th 228, 237 [“[v]ague or conclusory statements revealing an unspecified incapacity” are insufficient to support that a party is a person with a disability as defined by the ADA].) Appellant’s declaration did not describe any disabling condition. She stated merely that she was “experiencing” a “medical condition” on July 26, 2010, nearly three months before the scheduled October hearing. She supplied no declaration from a physician, and the trial court was under no obligation to accept statements in an unsworn letter as true. (See *Lewis v. Neptune Society Corp.* (1987) 195 Cal.App.3d 427, 430 [trial court’s refusal to grant continuance upheld where unsworn assessment from doctor stated that defense witness was “exhausted” and “unable to testify”].) Moreover, neither appellant’s declaration nor the July 26 letter described clearly how appellant’s medical condition precluded her from personally attending the hearing scheduled for

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<sup>10</sup> Appellant’s reliance on *In re Marriage of James and Christine C.* and *Biscaro v. Stern*, is misplaced, as both cases involved, inter alia, clear and unequivocal requests for accommodation under the ADA. In the former, the appellant requested an accommodation under the ADA, provided sworn expert testimony of her disabling condition, and provided proof that on the day of trial she was hospitalized. In the latter, the appellant made both oral and written requests expressly seeking accommodation under the ADA, and received assurances from the court that it would rule on his request and notify him in writing.

October 4. Neither described the severity of her condition or the effectiveness of medication to treat it. Dr. Sachs's primary concern appeared to be the impact of prescribed medication on appellant's driving ability. The fact that appellant was unable to drive when she was taking medication does not support that she was a disabled person for purposes of the ADA or that she was unable to get to court by alternate means.<sup>11</sup> (See *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 909 [no relief from default where defendant stated she was under doctor's care for heart attack and taking medication, but did not state "the severity of the condition or in what manner it limited her activity"]; cf. *Dutton v. Johnson County Bd. of Comm'rs* (D.Kan. 1994) 859 F.Supp. 498, 505-506 [plaintiff raised issue of fact sufficient to support finding he was disabled for purposes of ADA where he presented evidence showing his migraines were "severe and debilitating" when they occurred, rendered him "unable to drive or carry on most normal everyday tasks," and caused him to miss work on numerous days].) As the showing made in the August 13 and September 13 requests was wholly inadequate, the court's failure to rule on them, if error at all, was harmless.

## 2. *October 4 Request*

Appellant's October 4 request was presented directly to the court late on the day scheduled for trial to begin. Although appellant complains that the court lodged rather than filed the document, we see no prejudice from the manner in which the court accepted it. The court clearly reviewed the document, deemed it a

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<sup>11</sup> The record clearly demonstrates that appellant was able to personally appear in court on countless occasions throughout the litigation. Orders in the record from hearings on August 26, 2009, September 14, 2009, October 26, 2009, November 16, 2009, December 7, 2009, and March 8, 2010 show appellant appeared in court to represent herself. In addition, appellant appeared in person to argue the prior appeal on December 14, 2011.

request for a continuance, and denied it for the reasons stated on the record, most notably that appellant had not adequately explained her “dire medical emergency” and was simply trying to delay. In so doing, the court did not abuse its discretion.

Where an inadequate showing is made in support of an application for a continuance, it is not an abuse of discretion to deny it. (*Muller v. Tanner* (1969) 2 Cal.App.3d 445, 458.) Declarations in support of a continuance are subject to the same rules of evidence as testimony: “[p]rovided the trier of the facts does not act arbitrarily, he may reject in toto the testimony of a witness, even though the witness is uncontradicted.” (*Hicks v. Reis* (1943) 21 Cal.2d 654, 659-660, italics omitted; see *California Correctional Supervisors Organization, Inc. v. Department of Corrections* (2002) 96 Cal.App.4th 824, 832; see *Kalmus v. Kalmus* (1951) 103 Cal.App.2d 405, 413-414, disapproved on other grounds in *Hudson v. Hudson* (1959) 52 Cal.2d 735 [trial court’s finding that plaintiff was “physically able to come to California for the trial and to participate therein” upheld although physician’s affidavit stated that plaintiff’s physical condition would not “permit the physical ordeal of a transcontinental trip and a prolonged legal trial,” and that such trip and trial would “jeopardize the present condition of her health”].)

Appellant contends the October 4 request, like the earlier requests, represented not merely a request for a continuance, but also an attempt to obtain accommodation for a disability. Like the prior requests, the October 4 request failed to mention California Rules of Court, rule 1.100 or the ADA and contained language suggesting that the request to appear telephonically was made under California Rules of Court, rule 3.670.<sup>12</sup> In addition, the October 4 request was unsupported by evidence indicating that appellant was suffering from a disability

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<sup>12</sup> As discussed, California Rules of Court, rule 3.670 generally permits telephonic appearances only at hearings where no testimony is expected. To the extent appellant was seeking to appear telephonically under rule 3.670, the request was properly denied.

for which accommodation was needed. Appellant's declaration stated that she was suffering a "dire emergency medical condition" and would "file all the necessary documents regarding her medical condition with the court." Appellant's claim of a dire emergency medical condition, came on the heels of repeated attempts to continue and delay the trial. The court properly viewed the October 4 as an unsupported request for a continuance based on an alleged emergency, rather than a request for disability accommodation.<sup>13</sup>

Even "[t]he unavoidable absence of a party does not necessarily compel the court to grant a continuance." (*Whalen v. Superior Court* (1960) 184 Cal.App.2d 598, 600.) "A [party] who diligently prosecutes his suit is entitled to have a trial within a reasonable time, and the policy that there shall be a disposition of causes on their merits is not served when a party who is without fault is denied a determination of his cause through repeated continuances granted to the opposing party. At some point it must be ruled that the case shall without fail be tried on a day certain." (*Hansen v. Bernstein* (1952) 110 Cal.App.2d 170, 173; accord, *Redevelopment Agency v. Tobriner* (1989) 215 Cal.App.3d 1087, 1096.) The record reflects that this case has consumed a great deal of the parties' time and the court's resources. Appellant has prolonged the litigation with repeated requests for discovery, subpoenas to third parties, motions to compel, requests for sanctions, and other requests for relief. She failed to appear on August 4, the previous trial date, and clearly did not wish to go forward with the trial on October 4. The

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<sup>13</sup> Appellant attached to her January 2011 motion for new trial a letter dated October 6, 2010, purporting to be from Dr. Hussein Vahabzadeh, which stated that appellant passed a kidney stone on October 4, 2010. That unsworn statement was not before the court when it denied the motion to continue, and we do not consider it now. (See *In re B.D.* (2008) 159 Cal.App.4th 1218, 1239 [appellate court reviews correctness of judgment as of the time of its rendition, on the record before the trial court for its consideration].)

court's decision to go forward despite her unsupported claim of emergency was a reasonable one based on the evidence and the court's prior experience with appellant. We find no cause to reverse it.

### B. *Notice*

Appellant contends that proper notice was not given of the trial, requiring the judgment to be vacated. Although appellant appeared telephonically at the August 13 hearing when the trial dates were set, the court instructed respondent to give notice. There is no indication in the record that he did so. However, “[i]n order to obtain a reversal based upon such a procedural flaw, the appellant must demonstrate not only that the notice was defective, but that he or she was prejudiced.” (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1289, italics omitted.) “Procedural defects which do not affect the substantial rights of the parties do not constitute reversible error. [Citation.]” (*Ibid.*, quoting *Lever v. Garoogian* (1974) 41 Cal.App.3d 37, 40.) The record reflects that appellant was well aware of the date and nature of the hearing and the necessity of an appearance, having made multiple attempts to persuade the court to continue or excuse her absence and allow her to appear telephonically. No prejudice resulted from respondent's apparent failure to send formal notice of the trial date to appellant.

### C. *Income and Expense Declaration*

Appellant contends that respondent's Income and Expense Declaration introduced at the October 4 trial was not current or complete. She contends that

respondent's failure to comply with applicable statutes and rules requires that the judgment entered be set aside.<sup>14</sup>

Section 2105 of the Family Code requires that "each party . . . serve on the other party . . . a current income and expense declaration, executed under penalty of perjury" no later than 45 days before the "first assigned trial date." Family Code section 2106 provides that absent a waiver, stipulation, or good cause, "no judgment shall be entered with respect to the parties' property rights without each party . . . having executed and served a copy of the . . . current income and expense declaration." Under California Rules of Court, rule 5.128, "[c]urrent" is defined as "being completed within the past three months providing no facts have changed." (Cal. Rules of Court, rule 5.128(a).) Rule 5.128(b) further states that when attorney fees are requested by either party, "the section on the Income and Expense Declaration pertaining to the amount in savings, credit union, certificates of deposit, and money market accounts must be fully completed." (Italics omitted.)

The failure to file final income and expense statements and other disclosure documents required by Family Law provisions cannot lead to reversal unless the appellant establishes prejudice. (*In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 524, 527-528; *In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 336-337; *In re Marriage of Jones* (1998) 60 Cal.App.4th 685, 694-695; see *Burkle v. Burkle* (2006) 144 Cal.App.4th 387, 403 [recognizing that filing an income and expense declaration is "not a jurisdictional requirement" and that "although a rule of court phrased in mandatory language is generally binding on the courts, departure from the rule is not reversible error unless prejudice is shown"].) Appellant makes no contention that respondent's financial situation

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<sup>14</sup> Appellant raises the same contention with regard to respondent's Separate Property Declaration; however, she cites no statute or rule requiring such property declarations to be current or filed by any particular date.

improved between the date he filed the statement and the date of trial, and does not suggest how the court's consideration of an outdated income and expense statement prejudiced her. The only discrepancy she identifies is that a bank account which formerly contained \$100,000 had a balance on the date of trial of \$40,000. Had a more current statement been filed, it would have shown a deterioration in respondent's assets and a lesser ability to pay the monthly support appellant sought. Accordingly, the court's decision to proceed with the information filed some months earlier was not reversible error.

#### *D. Appellant's Schedule of Assets and Debts*

Appellant contends that trial exhibit 4, which appears to be a schedule of her assets and debts prepared in 2007 by an attorney who was then representing her, was "outdated," "doctored," and "falsified." She contends the document was marked in a way that led the court to mistakenly believe that appellant had agreed that debts the couple owed jointly to her mother were her separate liability. The document to which appellant refers contains a column to specify the nature of the debt, a column to specify the amount owed, a column to indicate the date incurred, and a column to indicate whether the party believed the debt to be separate property. Exhibit 4 indicated three debts were owed to appellant's mother. There were no check marks indicating the debts were separate property. However, someone mistakenly typed dates -- apparently the date the debts were incurred -- in the "sep[arate] prop[erty]" column rather than the "date incurred" column. Nothing in the record suggests the court's ruling concerning the nature of the debts allegedly owed to appellant's mother was based on the presence of dates in the "separate property" column of the exhibit. To the contrary, the record reflects the court questioned respondent about the debts and based its ruling on his testimony that he was aware of no such loans having been made during the couple's

marriage, and his further testimony that he had been unable to obtain information from his former mother-in-law during the discovery phase of the litigation. Appellant has failed to show the introduction of this exhibit prejudiced her in any way.<sup>15</sup>

#### *E. Proposed Judgment*

Appellant contends respondent violated California Rules of Court, rule 3.1590(f) when he failed to serve her with a copy of the proposed judgment, lodged with the court in December 2010.<sup>16</sup> The rule requires the court clerk to mail to “all parties that appeared at the trial” the court’s tentative decision, unless the decision was made in open court. (Cal. Rules of Court, rule 3.1590(a).) Alternatively, “[i]f a party requests a statement of decision,” the court must prepare and mail a proposed statement of decision “on all parties that appeared at the trial . . .” or designate a party to do so. (Cal. Rules of Court, rule 3.1590(f).) If a statement of decision is not requested and a written judgment is required, the court must prepare and mail a proposed judgment “on all parties that appeared at the trial” or designate a party to do so. As appellant did not appear at trial, there was no requirement under this rule that she be served with the proposed judgment.

Moreover, the “discrepancies” in the judgment to which appellant objects could not have been corrected through the procedure of objecting to a proposed

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<sup>15</sup> Additionally, we note that as appellant did not appear at trial, she made no objections to this exhibit and cannot now raise an issue concerning its admissibility or authenticity. (See Evid. Code, § 353, subd. (a) [A judgment or decision “shall not . . . be reversed[] by reason of the erroneous admission of evidence unless: (a) There appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion.”].)

<sup>16</sup> California Rules of Court, rule 3.1590 (g) provides: “Any party may, within 15 days after the proposed statement of decision and judgment have been served, serve and file objections to the proposed statement of decision or judgment.”

judgment. Appellant contests the court's finding with regard to the date of separation, contending it did not take place until June 2007. However, the evidence before the court -- the testimony of respondent and a signed lease dated March 6, 2007 -- supported the court's finding that the separation occurred in early March.

Appellant further objects to the finding in the judgment that appellant was separately responsible for "any and all personal loans in favor of [her] mother." She contends the evidence established loans in the total amount of \$376,000 and that this precise figure should have been included in the finding. The evidence established only that appellant's 2007 schedule of assets and debts (exhibit 4) indicated that there were three outstanding debts to appellant's mother, which totaled \$376,000. Respondent testified that he was unaware of any loans made to the couple by appellant's mother. In appellant's absence and the absence of any other witness with knowledge of the amount, if any, due on these alleged loans at the time of trial, there was no basis for the court to find a specific amount owed. On the record before it, the court's decision to allocate to appellant the responsibility for "any and all" loans from her mother was reasonable.

#### *F. Spousal Support*

The court stated at the hearing that appellant was entitled to 22 months of spousal support, a period approximately equivalent to one-half the length of the marriage. The court further indicated that payments would be in the amount stated in its last interim order. Respondent testified he had paid support for 19 months. The court, therefore, ordered respondent to pay an additional three months of support in the amount of \$2,500. Appellant contends that at the time of trial, she had been awarded only 16 months of spousal support, and that the court's prior interim order provided spousal support in the amount of \$3,100 per month. She

asks that we amend the judgment to award additional support in accordance with her calculations. Again, appellant seeks reversal of a finding made by the court based on the evidence before it at a hearing where appellant failed to appear and introduce evidence to support her position. Appellant's failure to attend the hearing, to present evidence concerning the amount of support she had received, or to object to the court's proposed findings, stated in open court, with regard to support precludes her from raising this issue on appeal. (See *In re Marriage of Hinman* (1997) 55 Cal.App.4th 988, 1001-1002 [contention that child support improperly calculated waived by failure to object to ruling in trial court].)

### **DISPOSITION**

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.